IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 170

GENERAL STORES CORPORATION,

Petitioner,

vs.

MAX SHLENSKY, SECURITIES AND EXCHANGE COMMISSION, CREDITORS' COMMITTEE AND WAGE CLAIMANTS,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS, WAGE CLAIMANTS

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Statement

The wage claimants join with the petitioner, GENERAL STORES CORPORATION, in seeking reversal by this court of the judgment of the Court of Appeals for the 2nd Circuit which affirmed by a divided court (2 to 1 with three separate opinions) the judgment of the United States District Court for the Southern District of New York, in proceedings for an arrangement under Chapter XI of the Bankruptcy Act, which judgment dismissed the arrangement proceedings under Chapter XI unless the petition is amended to comply with the provisions of Chapter X of the Bankruptcy Act.

The respondents support the position of the petitioner because their interests as wage claimants are seriously affected by the judgments below. The wage claimants totaling 174 in number, with total claims aggregating approximately $248,000*, of which almost $90,000 represents claims entitled to priority under the Bankruptcy Act,** respectfully submit to this court that affirmance of the judgments below will deprive them of their priorities of some $90,000 and thus they stand to suffer serious hurt.

POINT I

The wage claimants whose priorities will be destroyed by the transfer of the proceedings to reorganization under Chapter X are substantially and materially affected by the judgments.

The 174 wage claimants, who are respondents herein, lost their employment upon the filing by the debtor of the petition under Chapter XI of the Bankruptcy Act by reason of the fact that the debtor has disposed of the retail stores theretofore operated by it and in which the said respondents were employed. Under the provisions of Chapter XI*** and Section 64a of the Bankruptcy Act, these wage claimants became entitled to a priority of payment for wages not exceeding $600 each, earned by them within three months prior to the filing of the Chapter XI petition, which took place on October 18th, 1954.

Under the provisions of Section 64a which is made applicable by the provisions of Section 302 of the Bank-

* Petition of wage claimants filed in application for a writ of certiorari in this case.

** Section 64a, (2) Bankruptcy Act, 11 U.S.C.A. 104a (2).

*** Sec. 302 Bankruptcy Act, 11 U.S.C.A. 702

ruptcy Act relating to arrangement proceedings, each of the wage earners who had earned any wages between July 18th, 1954 and October 18th, 1954 is entitled to a priority of payment to the extent that such wages do not exceed $600 each.

By the order and judgment appealed from, these respondents are completely deprived of such priority since under the provisions of Chapter X* it is specifically provided that Section 64a of the Bankruptcy Act shall not be applicable to proceedings under Chapter X. It is thus apparent that should the debtor be compelled to resort to Chapter X, these respondents will be seriously prejudiced by the deprivation of the priority of payment to which they are otherwise entitled under Chapter XI or Sec. 64a. The wage earners, in addition to having priority claims of approximately $90,000, are also general creditors to the extent of over $150,000.

The order of the District Court (Dimock, *J.*) is self-executing. It provides for the dismissal of the Chapter XI proceeding unless the debtor files a voluntary petition amending its Chapter XI petition so as to comply with the requirements of Chapter X or unless creditors file an involuntary petition under Chapter X. So far, no creditors have filed an involuntary petition.

The wage earners are thus left at the mercy of the debtor or its other general unsecured creditors. A failure to comply with Chapter X would result in a dismissal of the proceeding. Subsequent proceedings instituted by filing a new petition either in straight bankruptcy or for any other relief would wipe out the priorities since the

* Sec. 102, Bankruptcy Act; 11 U.S.C.A. 502.

original filing date is a measuring stick for the three month period referred to in Section 64a.

The rights of the wage earners can only be protected by the continuation of the Chapter XI proceeding or by an adjudication of the debtor and the direction that said proceeding be thereafter continued in straight bankruptcy.

Wage earners have been under the special protection of Congress and the courts. The policy of Congress in granting priorities to wage earners has been the subject of judicial comment.

In *Blessing* v. *Blanchard*,* the Court said:

> "Priority of payment was intended for the benefit of those who are dependent upon their wages, and who, having lost their employment by the bankruptcy, would be in need of such protection."

In the Matter of Paradise Catering Corp.,** the Court said:

> "Section 64, sub. a (2) was enacted by Congress in order that workmen or servants, persons of menial position and low income, should receive a priority in bankruptcy due to the fact that they as a class can ill afford to be classified as general creditors."

In the Matter of Estey,*** the Court said:

> "The intention of Congress was plainly to give special protection to a class of wage earners who generally have no substantial savings or reserves to fall back on in case of adversity and therefore cannot afford to lose."

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* 223 Fed. 35 (C.C.A. 9th Cir.)

** 36 F. Supp. 974 (Southern District of New York).

*** 6 F. Supp. 570 (District Court, New York).

In the Matter of Laicsam Electric Co. Inc.,* Judge LEARNED HAND said:

> "The statute was intended to favor those who could not be expected to know anything of the credit of their employer but must accept a job as it comes, to whom the personal factor in their employment is not a practicable consideration."

It is apparent that the provisions granting priority to wage earners are the result of considerations of social policy. The courts should, therefore, in the ultimate determination of the rights of the parties, give special consideration to the Congressional policies intended by the statutory enactment. It is also important to consider the impact of the order and judgment appealed from. 174 separate and distinct family entities are affected directly and adversely by the decision. These wage earners have a vital and important stake in the affairs of General Stores Corporation. They represent a large segment of the creditors of the debtor and have already been seriously prejudiced by reason of the long delay which has ensued since the filing of the Chapter XI proceeding in the District Court on October 18th, 1954. Normally, the arrangement with creditors which was near conclusion would have been completed by this time and the wage earners would have been paid the amount of their priorities and such amount on their general claims as the debtor might eventually have paid to compose such claims, but for the decision of the District Judge.

Since, actually, the rights of stockholders are not affected by the Chapter XI proceeding and as the debtor seeks only to compose its claims with its unsecured creditors, it is respectfully submitted that the refusal of Judge DIMOCK and the Court of Appeals to consider the

* 300 Fed. 736.

best interests of the wage claimants, as well as the interests of other general unsecured creditors, constituted an abuse of discretion.

It is without question established from past experience, that a proceeding under Chapter X for the reorganization of this company, is bound to take a considerable length of time, much much more than the proceeding under Chapter XI. During all of this time, these wage earners, many of whom spent a lifetime in the employ of the debtor, would be compelled to wait for the mere pittance which should now be theirs upon the severance of their employment.

District Judge Gaston, who sat in the Court of Appeals below on the appeal from Judge Damock's judgment, pointed out this fact very cogently in his dissenting opinion*. He said:

> "The wage earners who fall among the unsecured creditors, and who are eager to have prompt payment, certainly will suffer delay if proceedings are had under Chapter 10."

To summarize the position of the respondent wage earners, it is respectfully pointed out:

1. The Chapter XI petition was filed on October 18, 1954.

2. Each wage claimant is entitled to priority for wages earned by him between July 18th, 1954 and October 18th, 1954, not exceeding $600**.

3. Under the order of Judge Damock, this priority will be lost to the respondents if the debtor amends its petition to comply with the provisions of Chapter X.

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* 222 F.2.234

** It is not intended to convey the impression that each of the wage claimants is entitled to the sum of $600. A number of them have priority claims which are less than $600.

4. If the debtor fails to amend, the original Chapter XI petition will be dismissed. Thereupon, the priority of payment granted to the respondents will be lost, not to be restored, even if a new petition is filed subsequently under any Chapter of the Act, since such filing will post date by more than three months the period during which the wages were earned.

CONCLUSION

For the foregoing reasons and in the interest of those most seriously affected, the judgment and order appealed from, should be reversed.

Respectfully submitted,

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LOUIS J. WEINSTEIN,
Of Counsel.

December 19, 1955.

APPENDIX

Statutes

Pertinent provisions of the Bankruptcy Act as referred to in the brief are as follows:

Section 64a (2), 11 U. S. C. A. 104a (2) reads:

> "Sec. 64. Debts Which Have Priority. a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be * * * (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; * * *"

Section 302 of the Bankruptcy Act, 11 U. S. C. A. 702, reads:

> "Sec. 302. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application, the date of the filing of the petition in bankruptcy shall be taken to be the date of the

filing of an original petition under section 322 of this Act, and the date of adjudication shall be taken to be the date of the filing of the petition under section 321 or 322 of this Act except where an adjudication had previously been entered."

Section 102 of the Bankruptcy Act, 11 U. S. C. A. 502 reads:

"Sec. 102. The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That section 23, subdivisions b and n of section 57, section 64, and subdivision f of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. For the purposes of such application, provisions relating to 'bankrupts' shall be deemed to relate also to 'debtors', and 'bankruptcy proceedings' or 'proceedings in bankruptcy' shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 128 of this Act, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 127 or 128 of this Act except where an adjudication had previously been entered."